IN THE UNITED STATES BANKRUPTCY COURT
FOR THE EASTERN DISTRICT OF TENNESSEE

In re ROBERT L. EATON, Debtor.	No. 02-22063 Chapter 7
SAMUEL S. TAYLOR and ISABEL S. TAYLOR, Plaintiffs, vs. ROBERT L. EATON, Defendant.	Adv. Pro. No. 02-2064

M E M O R A N D U M

APPEARANCES:

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MARCIA PHILLIPS PARSONS
UNITED STATES BANKRUPTCY JUDGE

This 11 U.S.C. § 523(a)(4) and (19) dischargeability proceeding is before the court on the plaintiffs' motion to amend complaint to add § 523(a)(2) of the Bankruptcy Code as an additional basis for nondischargeability. For the reasons discussed below, the motion to amend will be granted. This is a core proceeding. *See* 28 U.S.C. § 157(b)(2)(I).

The plaintiffs Samuel and Isabel Taylor filed the complaint initiating this adversary proceeding against the debtor Robert Eaton on September 20, 2002. In the complaint, the plaintiffs allege that on September 2, 1997, they obtained a judgment against the debtor in Circuit Court for Washington County, Tennessee and that this judgment debt is nondischargeable under 11 U.S.C. § 523(a)(4) and (19). Copies of the judgment and of the complaint filed in that state court action are attached as exhibits to the complaint in this adversary proceeding.

The debtor filed an answer to the complaint on October 21, 2002, and the plaintiffs filed on January 13, 2003, pursuant to Fed. R. Bankr. P. 7015 and Fed. R. Civ. P. 15, the motion to amend complaint which is presently before the court. In the motion, plaintiffs state that their "counsel, in doing research for a summary judgment motion, discovered that defendant's debts may not be dischargeable under 11 U.S.C. § 523(a)(2) in addition to § 523(a)(4) and (19) that had already been stated in the

original complaint. No new facts are alleged, and ... the only proposed change is to add another potential section of the Bankruptcy Code to the complaint." The plaintiffs also contend in the motion that the debtor will not be prejudiced by the amendment because "[n]o discovery has been taken or arranged, and ... nothing has yet occurred in the case except a complaint and answer, and order for filing a summary judgment motion."

The debtor has filed a response in opposition to plaintiffs' motion to amend in which he asserts that the deadline under Fed. R. Bankr. P. 4007(c) for filing a complaint to determine dischargeability is jurisdictional. Because the amended complaint raising § 523(a)(2) was filed after Rule 4007(c)'s bar date of September 23, 2002, the debtor contends that the amendment is improper and may not be allowed under Rule 7015.

Federal Rule of Bankruptcy Procedure 7015 provides that Rule 15 of the Federal Rules of Civil Procedure applies in adversary proceedings. Paragraph (a) of Rule 15 states:

> **Amendments.** A party may amend the party's pleading once as a matter of course at any time before a responsive pleading is served or, if the pleading is one to which no responsive pleading is permitted and the action has not been placed upon the trial calendar, the party may so amend it at any time within 20 days after it is served. Otherwise a party may amend the party's pleading only by leave of the court or by written consent of the adverse party; and leave shall be freely given when justice so requires. A party shall plead in response to an amended pleading within the time remaining for response to the original

> pleading or within 10 days after service of the amended pleading, whichever period may be the longer, unless the court otherwise orders.

Paragraph (c) of Rule 15 provides in part:

> **Relation Back of Amendments.** An amendment of a pleading relates back to the date of the original pleading when
> (1) relation back is permitted by the law that provides the statute of limitations applicable to the action, or
> (2) the claim or defense asserted in the amended pleading arose out of the conduct, transaction, or occurrence set forth or attempted to be set forth in the original pleading, or ....

The courts which have considered the identical issue raised herein have concluded that if the amended complaint relates back to the original complaint under Fed. R. Civ. P. 15(c), there is no jurisdictional defect which prevents the filing of the amended complaint. *See, e.g., United States Postal Serv. v. Steinmeyer (In re Steinmeyer)*, 274 B.R. 201, 204-06 (Bankr. D. S.C. 2001); *Farmer v. Osburn (In re Osburn)*, 203 B.R. 811, 812-13 (Bankr. S.D. Ga. 1996); *Guaranty Corp. v. Fondren (In re Fondren)*, 119 B.R. 101, 103-04 (Bankr. S.D. Miss. 1990); *Am. Gen. Fin., Inc. v. Heath (In re Heath)*, 114 B.R. 310, 312 (Bankr. N.D. Ga. 1990). Under Rule 15(c)(2), "[a] party's amended pleading relates back to the date of the original filing if the claim arises out of the conduct, transaction, or occurrence set forth in the original pleading." *In re Osburn*,

203 B.R. at 813. As stated by one court:

> [I]f the original complaint identifies the factual circumstances out of which the amended claim arose, the amendment may "relate back," and be deemed to fall within the time strictures of Rule 4004(a). [Citation omitted.] If, however, the amendment states an entirely new claim based upon a different set of facts, it does not relate back. The general inquiry is whether the defendant is on notice, as stated in the general fact situation set forth in the complaint, he may be held liable for particular conduct. Thus, if a defendant has notice that he is sought to be held liable for particular conduct or under a particular transaction, the plaintiff may later amend the complaint, beyond the time limitation, to add theories of liability, so long as liability is based upon that same conduct or transaction.

Employers Mut. Cas. Co. v. Lazenby (In re Lazenby), 253 B.R. 536, 539 (Bankr. E.D. Ark. 2000).*

Applying this standard to the present case, it is clear that the amended complaint which the plaintiffs seek to file relates back to the original complaint in this action. No new facts are alleged in the amended complaint; instead, it simply sets forth a new legal basis as to why the facts set forth in the original complaint give rise to a nondischargeable debt. *See Michener v. Brady (In re Brady)*, 243 B.R. 253, 260 (E.D. Pa. 2000) (citing

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*Although the *Lazenby* decision addresses the issue in the context of Fed. R. Bankr. P. 4004(a) which sets forth the deadline for filing complaints objecting to discharge, while the instant case concerns the dischargeability deadline of Fed. R. Bankr. P. 4007(c), the legal principle announced in *Lazenby* is equally applicable to the facts at hand.

In re Ishkhanian, 210 B.R. 944, 955 (Bankr. E.D. Pa. 1997)) ("[W]here the text and substance of a newly-asserted claim requires no additional factual allegations besides those recited in the original complaint to support it, and the amendment merely seeks to add an additional legal ground by which the discharge or dischargeability of a specific debt is challenged, an amendment to the pleadings may be allowable."); *Tri-Ex Enters., Inc., v. Morgan Guar. Trust Co. of New York*, 586 F. Supp. 930, 932 (S.D.N.Y. 1984)("[I]f the litigant has been advised at the outset of the general facts from which the belatedly asserted claim arises, the amendment will relate back even though the statute of limitations may have run in the interim.").

In accordance with the foregoing, the court will enter an order granting plaintiffs' motion to amend complaint contemporaneously with the filing of this memorandum opinion.

FILED: March 28, 2003

BY THE COURT

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MARCIA PHILLIPS PARSONS
UNITED STATES BANKRUPTCY JUDGE